

P E T I T I O N

For the Pursuers of the Sale of LOCKERBIE.

MY Lords of Council and Session, unto your Lordships humbly means and shews, we your Servitors *James Grierson of Capenuch, Andrew Johnston of Knock-hill, Mr. William Johnston Son to Sir James Johnston of Wester-ran*, and the other real Creditors Pursuers of the Sale of *Lockerbie*; that your Petitioners having carried on a Process of Sale of the Estate of *Lockerbie*, containing a ranking of the Creditors, the length of an Act, whereupon a great part of the Probation of the Rental is taken, and first and second Diligences against such of the real Creditors who had not produced their interests to be ranked in the said Process of Sale; For stopping the Execution thereof, and procedor of the Sale, *Mungo Johnston* and other near Relations Confidants of *Lockerbie* the Debitor, gave in a Bill in Name of some of the Creditors and Clerks, representing that the Interests for production whereof, the Caption was direct, were already produced in a Process of Ranking of the Creditors, where all the Creditors were already called or compearing, and upon mutual Bills upon this subject by your Petitioners the Pursuers of the Sale, and other Creditors, by your Lordships Deliverance, the 25 Decemb. last, the Creditors were ordained to produce their Rights and Interests in the Process of Sale, where the real Creditors are cited, to the effect they may be ranked, and Warrant granted to the Clerk of the former Process of Multiplie Poynding, to transmit the Writs and Interests in that Process to the Process of Sale, unless the haill real Creditors were called or compearing in the Process of ranking, the other Creditors compearing, neglecting to give a Condescendance to the effect foresaid, your Petitioners did give in a Condescendance of real Creditors not cited, nor compearing in the Process of Ranking, and after several Intimations of peremptor Dyets, the other Creditors at last gave in Answers thereto, without

(2)

without producing the Process of Multiplie Poynding to instruct the sament. The Lords by their Deliverance the third of January 1695, remitted to the Lord Rankelior then Ordinar on the Bills, to hear the Parties Procurators on the Condescendance and Answers, and to compare the said Condescendance with the Process of Multiplie poynding, and to determine in the Quality of the Deliverance: But Mungo Johnston and the other Creditors, notwithstanding of the several Intimations made to them by the Ordinar, failed to produce the said Process of Multiplie poynding, that the sament might be compared with the said Condescendance, and notwithstanding of a precise and peremptor Order signed by the Lord Rankelior 10th. Feb. last, ordaining James Nasmyth Clerk to the said Process of Multiplie poynding with all Expedition to bring the said Process to my Lords Lodging, that he might Consider the same, and compare it with the Condescendance, the same was neglected as the rest, and instead thereof, Mungo Johnston who pretends a Right of Property to a part of the Estate to be exposed to Roup and Sale, and after he had been called and comparing in the Process of Sale, and debating his Right, why that part of the said Estate could not be exposed to Sale, and concluded by an Act in that Process, for recovering of all Writs *hinc inde*, for clearing whether that part did belong to the Debitor, or to the said Mungo Johnston, to be Discussed *in termino*, before the Lands should be exposed to Roup, insists vigorously to have that Point reported and Determined in the Process of Multiplie poynding; wherenpon your Petitioners having represented the true Case, your Lordships by your Deliverance the 13th. Feb. last, stopped the Report of the Point in the Process of Ranking, till the Lord Rankelior Determined which of the Process of Sale or Ranking shall proceed, for Determining the Questions and preferences of the Creditors, and as before, Ordained James Nasmyth Clerk to the said Ranking, to Answer to the Condescendance given in by your Petitioners, and that in the Afternoon, before the Lord Rankelior, with Certification; but this Intimation was neglected as the rest; and the said Mungo Johnston did upon the 20th. Feb. last, make a most Clamorous & Unjust representation, that he was postponed in reporting of his Process, by an indefinite Stop, upon the pretence of your Petitioners Process; And thereupon did obtain an Warrant without Hearing to have the point in the Process of Ranking reported, which thereafter upon representation by your Lordships Petitioners of the true Matter of Fact above set down, that the Delay proceeded only from the wilfulness of the said Mungo Johnston who would not give Obedience to your Lordships Interlocutors and Orders: Your Lordships by your Deliverance the 22d. of February last, Ordained the Process of Multiplie poynding, and Writs therein to be produced before the Lord Rankelior, conform to the former Reference that he might Compare the same with the Petitioners Condescendance, and superceeded Report in the Multiplie poynding till the said Lord should Determine.

Whereupon several Intimations being made to the Clerk of the Process of Multiplie poynding to attend the Lord Rankelior with the process of Ranking, that he might Compare the same in Manner foresaid, and that he had been required by way of Instrument, and Failzied to Compear: The Lord Rankelior by his Interlocutor the 5th. of June last, Ordained the Interest in the Process of Ranking to be Transmitted to the hands of your Petitioners Clerk in the Process of Sale, notwithstanding of the which Interlocutor, the Clerk in the Process of Ranking still delayed the giving Obedience thereto, and at last

(3)

last procured a Hearing, wherein the said *Mungo Johnstoun* was fully heard, and sent the Condescendence of real Creditors, who are neither called nor appearing in the Process of Multiply-Poining, whereupon the Lord *Rankeillor* by his Interlocutor the 29th of June last, after Hearing both parties, and having considered the Replies made for the Pursuers of the Process of Sale to the Answers made to their Condescendence by the Pursuers of the Multiply-poining, and the Interest produced in the Process of Sale for *Carruthers of Dam, William Forrester* and others. And that *Carruthers of Dam, William Forrester*, and several others are not Cited in the Multiply-poining, nor appearing, nor producing their Interests therein, so that there cannot follow thereupon a valid Decree of Ranking. And said, that albeit the fore-named persons had appeared, and appeared for a Factor, yet that cannot inter their Appearance in the Multiply-poining, and therefore adhered to his former Interlocutor.

The said *Mungo Johnstoun* in his accustomed manner, did not acquiesce in these Determinations, but on the 30 of June last, gave in a Bill to the 3d Clerks Office, where neither the process of Ranking nor Sale was, that your Petitioners might be vexed, and distracted amongst all the three Offices, wherein the true matter of Fact foresaid is altogether Misrepresented or Suppressed, no mention being made of the Lord *Rankeillors* Determination, the Day before upon hearing of Parties, nor of his former Orders and Interlocutors thereanent: But that he was hindered in his Process and Report by the Difference who should be Clerk of the Process, he being content of either of them: Whereas truly he will yield to no Determination, unless the Clerk of the Ranking were preferred; and that your Petitioners, and the Clerks of their Process of Sale had from time to time attended, and pressed the Determination of the Matter which they have obtained in their Favours, and the said *Mungo* has obtained a new Reference to the Lord *Rankeillor*, as if there had been no Application to, nor Determination by him therein. And seeing this Case in *terminis* was determined in the Process of Ranking of the Creditors of *Nicolson*, which had been Commenced in the year 1686, or 1687. And Decrees of preference in favours of Creditors for 200000 *lib.* extracted in the year 1688, was ordained to be repeated in the Process of Sale in another Clerks office, commenced in the year 1692. In respect the said Process of Sale had a Conclusion of Ranking and Preference, and that all the real Creditors were Cited for that effect, and that in the foresaid Decree of Ranking the whole Creditors, had produced their Interests, & borrowed them up upon Receipt, and thereafter some of them were produced in the Process of Sale, and that during the Dependence of the same Process of Ranking, and in the same Office there was a Competition betwixt *Pitcairn, Montgomery* and others who should be Factor to the Estate, wherein there were Lists of Creditors given in proposing one or other of these persons to be Factor, which satisfies all the pretences insisted on for the Clerk in this Ranking. And neither the calling of any of the Creditors in the Process of Reduction, and Declarator, nor a Creditors Name being made use of with, or without his Warrant for giving preference to a person to be Factor to the Estate, can satisfy the Terms of the Lords Interlocutor in December last, but only a Citation or Appearance in the Process of Ranking: Craving their Interests to be preferred or Ranked. Nor does the pretence, that by the late Articles of Regulations, the Decree of Ranking must precede the Roup, alter the Case, seeing the Process of Sale

(4)

Sale has a Conclusion of Ranking, wherein the Term Assigned is Elapsed, and several Interests produced by some of the Creditors, and the Circumduction of the Term against the rest, stopped by the foresaids Mis-representations. And if the said Mungo Johnstoun would give obedience to the foresaids repeated Interlocutors of the Lord Rankeillor, by producing his Interests in the Clerk of the Sale's Hands, he may obtain the Point at a *Visandum* Determined within 48 Hours after he gives Obedience. And it is sufficient, if the Ranking be concluded before the Dyet of the Roup be appointed, the Probation in this Cause not being concluded, in relation to the Rental and Value. And before advising of the Probation, and appointing a Dyet for the Roup, the Ranking may easily be Determined, which Ranking can only be Legally effectually and securely done in the Process of Sale, where all the real Creditors are Cited to that Effect.

May it therefore please your Lordships to Discourage the Methods used by *Mungo Johnstoun* for Delays, and to Censure him for the Mis-representation of the Case made by him, and to adhere to the Determination made by the Lord *Rankeillor*, conform to your Lordships Interlocutor in this case, and in the case of the Creditors of *Nicolson*, whereof the Ranking is yet depending; And to ordain *Mungo Johnstoun* and the other Creditors, to Transmit their Interests to the Clerk of the Process of Sale, concluding a Ranking, That the Ranking may be Determined, and the Roup and Sale no longer postponed, to the great prejudice of your Petitioners, and benefit of *Mungo Johnstoun*, who colludes with his Nephew, the apparent Heir of *Lockerbie*. And your Lordship Answer, &c.